

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO.EB33CB-67019

Danielle Solomon,)	
)	<u>Administrative Action</u>
Complainant,)	
)	FINDING OF PROBABLE CAUSE
v.)	
)	
Mason Jar,)	
)	
)	
Respondent.)	

Danielle Solomon (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR), alleging that her former employer, Mason Jar (Respondent), discriminated against her based on creed in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, when it failed to accommodate her religious beliefs and terminated her employment after she refused to work on Easter Sunday. Respondent denied the allegations of discrimination in their entirety. DCR's investigation found as follows.

SUMMARY OF INVESTIGATION

Respondent is a restaurant located in Oakland, New Jersey. Respondent hired Complainant in April 2016 as a server at the restaurant, where her job duties involved taking food and drink orders and serving guests. Complainant committed to work a minimum number of shifts per week, including nights, weekends and holidays. Complainant's personnel file contained no record of any discipline.

Respondent explained that it employed approximately 12 people as wait staff to ensure adequate coverage for both its restaurant and off-site catering, and could have between 2 and 12 staff members scheduled to work at any given time. It stated that the restaurant was open between 11 a.m. and 2 a.m., seven days per week, except that it is closed on Thanksgiving, Christmas and New Year's Day.

Complainant alleged that she was fired by Respondent when she refused to work on Easter. According to Complainant, sometime in mid-March 2018, Respondent's manager, Heidi Williams, approached a group of servers and asked who could work a brunch shift on Easter Sunday, April 1, 2018. Complainant stated she told Williams at that time that she could not work that day. There was no further discussion between the two at that point. Complainant stated that soon after, Respondent sent an email to all of its servers indicating that working on Easter Sunday was mandatory.

A memo in her personnel file dated March 2018 reflects that “Joel asked Danielle what shift she would prefer to work on Easter. She said she would get back to him after she spoke with her mother. Conversation with Joel she mentioned that she wanted to be with her cousins and family for the holiday. Joel offered her to come in late for evening shift or leave early for brunch shift [sic throughout].”

Complainant stated that while she told Respondent she wanted to speak with her mother, she had already made up her mind she could not work that day but that “she didn’t know how to tell them.” Complainant stated that she is a devout Roman Catholic, and Easter is one of the two holiest days of the year in the Roman Catholic calendar. She also stated that she did not work on Easter in 2017 as working on Easter was not mandatory at that time. Respondent was aware she was religious. She also stated that Easter Sunday is “just the most important religious holiday. It’s always been that way in my family and I have grown up with that in my life.” She continued “it’s a big deal for me, not just with my family...it’s my decision because being Catholic, it’s my religious belief. I go to Church every Sunday. It’s not me not wanting to go to work. I take my religion very seriously and so Easter and Christmas being the most religious holidays.” Complainant stated she therefore informed Respondent that based on her religious beliefs, she could not work at all on Easter.

Another memo in her personnel file, dated March 27, 2018 and also written by Williams, states “I text Danielle to let me know what shift she was doing on Easter- sent back she spoke to her parents and there is really no way that she can come in that day [sic throughout].” In a final undated entry, presumably written on March 31, 2018 (the date of the conversation), Williams wrote: “Conversation with Danielle Ira and myself. Danielle kept insisting we were firing her but we gave her every option we could to accommodate her going to church on Easter but [she] insisted needed whole day off. We tried to explain to Danielle we couldn’t make an exception for her and require everyone else to work that day and made their church arrangements around working schedules [sic throughout].”

Complainant provided an audio recording of her final conversation with Respondent on March 31, 2018, that was referenced in Williams’ final memo. In it, Complainant stated numerous times that she was not quitting. She stated that she “just can’t work Easter and you guys are firing me.” Respondent’s owner Ira Kaplan is heard repeating that it is “mandatory” for Complainant to work on Easter and that Complainant was being “unreasonable.” Respondent’s manager Heidi Williams also stated that she was “trying to run a business” and if others wanted to do the same thing “there would be nobody here to work.” The conversation continues with Complainant stating “it’s a religious holiday ... it’s illegal ... you can’t fire someone because of a religion.” Kaplan stated that Complainant was being given an option of choosing the early or late shift for Easter, but that “mandatory means mandatory” and she would need to work that day. Complainant responded that the “whole day and night, Easter is the whole day and night, that’s my religious holiday. This is not my parents telling me I can’t work, this is my religion. I take this very seriously.” Kaplan ended the conversation by telling Complainant that “I have no more to say, we like you very much and you will be missed.”

Respondent informed DCR that Complainant's name was included on its schedule for Easter Sunday in the hope that she would change her mind. However, Complainant did not come to work on Easter Sunday.

DCR interviewed several members of Respondent's staff who worked on Easter Sunday, April 1, 2018. All indicated that to the best of their knowledge, everyone worked that day, including two servers who worked both brunch and dinner shifts. All described the day as being very busy, particularly the first shift as all three brunch seatings were sold out. [REDACTED], [REDACTED], stated that Easter Sunday was one of the two busiest days for Respondent (the other being Mother's Day) and added that it is an "all hands on deck" kind of day. Servers [REDACTED] worked the brunch shift and confirmed that it was completely sold out. [REDACTED] added that because Complainant did not work "we had to scramble for help" and that Heidi Williams needed Complainant to work.

ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2(a). "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b).

A finding of probable cause is not an adjudication on the merits. It is merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Ibid.

The LAD makes it unlawful to fire a person because of her religion. N.J.S.A. 10:5-12(a). It also makes it illegal "(1) For any employer to impose upon a person as a condition of obtaining or retaining employment, ... any terms or conditions that would require a person to violate or forego a sincerely held religious practice or religious observance, including but not limited to the observance of any particular day or days or any portion thereof as a ... holy day in accordance with the requirements of the religion or religious belief, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's religious observance or practice without undue hardship on the conduct of the employer's business." N.J.S.A. 10:5-12(q)(1). It similarly prohibits an employer from refusing "to permit an employee to utilize leave, as provided for in this subsection q., which is solely used to accommodate the employee's sincerely held religious observance or practice. Except where it would cause an employer to incur an undue hardship, no person shall be required to remain at his place of employment during any day or days or portion thereof that, as a requirement of his religion, he observes as his ... holy day." N.J.S.A. 10:5-12(q)(2).

The statute defines an “undue hardship” in this context as an accommodation “requiring unreasonable expense or difficulty, unreasonable interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system.” N.J.S.A.10:5-12(q)(3)(a). It also specifies what factors a fact-finder must consider in determining whether the employer has proven undue hardship:

- (i) The identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer.
- (ii) The number of individuals who will need the particular accommodation for a sincerely held religious observance or practice.
- (iii) For an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

N.J.S.A. 10:5-12(q)(3)(b).

Here, there is probable cause to believe that Respondent may have violated the LAD when it fired Complainant for refusing to work on Easter.

Complainant clearly expressed a sincerely held religious belief that she could not work on Easter, which she explained was one of the two most important days in the Roman Catholic calendar. Respondent quoted from Canon 1247 from the Commentary on the Code of Canon Law in its Position Statement to establish that the Roman Catholic religion does not prohibit work on Easter Sunday as “Those whose livelihood requires them to work on holy days and/or Sundays are morally excused from observance of rest but not necessarily from the participation in the Mass.”¹

However, an employer may not refuse to grant a religious accommodation by attacking an employee’s religious belief or trying to show the employee that she is observing her religion incorrectly. The issue is only the sincerity of Complainant’s religious belief that she was forbidden from working on Easter—not whether that belief was consistent with published Canon Law. A fact-finder’s “role is not to assess the verity of a person’s religious belief but to instead determine whether the individual’s beliefs were sincerely held.” Sepulveda v. Borne Holding Co., 2010 N.J. Super. Unpub. LEXIS 2943 (App. Div. Dec. 9, 2010) at 13, citing Patrick v. LeFevre, 745 F.2d 153, 157 (2d Cir. 1984)). In this case, Complainant professed that her religious beliefs precluded her from working on Easter Sunday. Respondent did not appear to question the sincerity of those beliefs, even if it did assert that they did not comport with Roman Catholic doctrine.

¹ The Commentary on the Code of Canon Law, Beal, Coriden, and Green, The Canon Law Society of America (2000) Canon 1247, comment.

An employer can refuse to grant a religious accommodation if it can prove that doing so would cause an undue hardship to its business. But here, Respondent did not make the necessary showing. Complainant did not ask for all Sundays off, or even many holidays off each year: instead, she asked to have off on Easter, which she considered to be one of the two holiest days of the year. Complainant worked on numerous Sundays and, in the week preceding Easter, on both Good Friday and Holy Saturday.

And Respondent did not prove that accommodating Complainant in her request not to work on Easter Sunday would cause an undue hardship to the operation of its business. Respondent asserted that it employed other Catholics and that if it accommodated Complainant, it would have had to accommodate everyone who made a similar request. While “the number of individuals who will need the particular accommodation for a sincerely held religious observance or practice” is a factor to be considered in determining the existence of an undue hardship, Respondent did not provide any specific information as to how many of its wait staff were Roman Catholic, how many requested the accommodation of not being required to work on Easter, or whether this type of accommodation had ever before been requested in the past. Similarly, Respondent did not provide evidence of any specific cost it would be forced to incur by allowing Complainant not to work on Easter, either in terms of loss of productivity, the cost of hiring additional wait staff, or lost customers. While interviews with staff supported Respondent’s assertions that it required every other employee to work on Easter Sunday, and that it had to “scramble for help” when Complainant did not come in, Respondent did not introduce any evidence that this constituted an undue hardship on its business operations. Respondent thus did not meet its burden under N.J.S.A. 10:5-12(q).

In light of the above, the Director finds that there is PROBABLE CAUSE to believe that Respondent violated N.J.S.A. 10:5-12(a) and (q) by firing Complainant when she refused to work on Easter. Accordingly, the Director finds that this matter should “proceed to the next step on the road to an adjudication on the merits.” Frank, 228 N.J. Super. at 56.

Date: August 14, 2019

A handwritten signature in blue ink, reading "Rachel Wainer Apter", enclosed within a rectangular box.

Rachel Wainer Apter, Director
NJ Division on Civil Rights